

EXHIBIT A

ORIGINAL

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FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF LOS ANGELES

SEP 14 2012

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 PROTECTIVE INSURANCE COMPANY, TRAVELERS CASUALTY & SURETY COMPANY,
 TRAVELERS INDEMNITY COMPANY, and TRAVELERS PROPERTY CASUALTY COMPANY OF
 AMERICA

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES**

NATIONAL FOOTBALL LEAGUE and NFL
 PROPERTIES LLC,

Plaintiffs,

vs.

FIREMAN'S FUND INSURANCE COMPANY,
 TIG INSURANCE COMPANY, et al.,

Defendants.

Case No. BC490342

**THE TRAVELERS INSURERS' NOTICE OF
 MOTION AND MOTION TO DISMISS
 AND/OR STAY BASED ON FORUM NON
 CONVENIENS [C.C.P. §§ 410.30(a) and
 418.10(a)(2)] AND MEMORANDUM OF
 POINTS AND AUTHORITIES IN SUPPORT
 THEREOF**

[Declarations of Matthew C. Kalin, Esq. And
 Rebecca A. Williams And Supporting Exhibits
 Filed Concurrently Herewith]

Date: October 11, 2012
 Time: 8:30 am
 Dept: 46
 Judge: Hon. Frederick C. Shaller

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CIT/CASE: BC490342 LEA/DEF#:
 RECEIPT #: CCH195707091
 DATE PAID: 09/14/12 04:12:15 PM
 PAYMENT: \$2,175.00 0310
 RECEIVED:
 CHECK: 2,175.00
 CASH:
 CHANGE:
 CARD:

09/17/12

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on October 11, 2012, at 8:30 a.m. or as soon thereafter as counsel may be heard, in Department 46 of the above-entitled Court, located at 111 N. Hill Street, Los Angeles, California 90012, Defendants Discover Property & Casualty Insurance Company, St. Paul Protective Insurance Company, Travelers Casualty & Surety Company, Travelers Indemnity Company and Travelers Property Casualty Company of America (collectively referred to herein as "Travelers") will move that this Court dismiss and/or stay the proceedings in this action pursuant to C.C.P. §§ 410.30(a) and 418.10(a)(2).

This motion is made on the grounds that this is an insurance coverage dispute, pressed by two New York policyholders, which arises from an insurance relationship centered in New York, New York and which is already pending in the courts of New York, and therefore pursuant to C.C.P. §§ 410.30(a) and 418.10(a)(2) this action should be dismissed and/or stayed because the State of New York is the appropriate forum for determination of this action.

This motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declarations of Matthew C. Kalin, Esq., Rebecca A. Williams and exhibits attached thereto, the Complaint in this action and such other and further evidence and argument, oral and/or written, as is submitted at the hearing of this motion.

Dated: September 14, 2012

THE AGUILERA LAW GROUP, APLC

A. Eric Aguilera, Esq.
Attorneys for the Travelers Defendants

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Dated: September 14, 2012

THE AGUILERA LAW GROUP, APLC



A. Eric Aguilera, Esq.
Attorneys for the Travelers Defendants

MEMORANDUM OF POINTS AND AUTHORITIES**INTRODUCTION**

Is Los Angeles County (a location the NFL has deemed unsuitable for an actual franchise) the appropriate forum for an insurance coverage dispute between two New York policyholders and their insurers regarding the application of insurance policies negotiated, issued and/or issued for delivery in New York, with the assistance of New York insurance brokers and agents, to multi-state claims currently being litigated in the United States District for Eastern District of Pennsylvania? The answer to that inquiry is an unequivocal "no" and this Court should dismiss or stay this action in favor of the earlier-filed, comprehensive New York coverage litigation involving the same parties, the same New York-centered insurance relationship and the same claims.

This action involves insurance coverage for, and the defense of, scores of underlying lawsuits brought by former National Football League players against, *inter alia*, the National Football League (the "NFL,") and NFL Properties, LLC ("NFL Properties") alleging damages as a result of long-term, cumulative brain injuries sustained during games played in various locations throughout the country. The NFL and NFL Properties contend, *inter alia*, that Discover Property & Casualty Insurance Company, St. Paul Protective Insurance Company, Travelers Casualty & Surety Company, Travelers Indemnity Company and Travelers Property Casualty Company of America (collectively referred to herein as "Travelers") are obligated to defend and/or indemnify them under various policies of liability insurance, all of which were issued or issued for delivery in New York.

The NFL and NFL Properties (neither of which are domiciled or resident in California) nonetheless maintain that Los Angeles County¹ is the appropriate forum to resolve this coverage dispute, since California is the locus of some of the underlying injuries, and the domicile of at least one of the defendants. While the underlying injuries allegedly occurred in a number of different states (including New York, California and more

¹ The plaintiffs' desire to transfer its New York-centered coverage litigation to Los Angeles County is curious, especially since the NFL has not seen fit to do likewise with an NFL franchise. As a May 2012 posting on the NFL's own website observed: "So as we close in on the 20th anniversary of the Raiders' and Rams' escape from L.A., we still don't know the Where or the Who – and now even the Why is coming into question when it comes to reestablishing the league's presence in the City of Angels. The bottom line is the NFL is thriving. The TV deals are done. And those in Los Angeles that follow the NFL have displayed a contentment with being fed the premier games on a week-to-week basis, even if it means that the closest team is located more than 100 miles away. Maybe that changes sometime in the near future. But as of right now, there doesn't seem to be any real urgency to make that happen." *NFL in L.A.? Five Teams Could Move, But Nothing's Imminent*, by Albert Breer, Reporter, NFL.com and NFL Network, May 10, 2012.

1 than 20 other states), New York is the indisputable focal point of the instant coverage dispute, as well as the
2 contractual relationship among the parties.

3 The NFL and NFL Properties are New York entities headquartered at 345 Park Avenue, New York
4 City. All of the policies issued to the NFL and NFL Properties by Travelers were negotiated, issued and/or
5 issued for delivery in New York, through New York brokers and agents. The same is true for most, if not all of
6 the other policies at issue in this action. Many of the defendants are or were located in New York when those
7 policies were issued.

8 The underlying cases center upon allegations that the highest levels of NFL management knew about
9 certain brain injury risks associated with playing in the NFL and failed to act on that knowledge or disclose it to
10 NFL players. The witnesses, documents and other proofs necessary to resolve those issues are located in New
11 York. In fact, the NFL and NFL Properties selected attorneys in the New York headquarters of Paul, Weiss,
12 Rivkind, Wharton & Garrison, LLP to defend them in *all* of the underlying actions.

13 New York was also the locus of the claim submissions and discussions leading up to the filing of
14 coverage litigation in New York and the subsequent commencement of the instant action. Travelers and, to our
15 knowledge, all other defendants, were advised of the underlying lawsuits and the coverage claims asserted by
16 the NFL and NFL Properties by the New York office of their current insurance broker, Marsh. All
17 communications to Travelers regarding these matters from the NFL and NFL Properties emanated from the
18 insureds' Park Avenue offices, or Marsh's New York office. Marsh and the insureds convened several
19 meetings with Travelers and other defendants to discuss the underlying claims and related issues, all of which
20 took place in New York City.

21 When the coverage dispute ripened to litigation, suit first was filed in New York. The NFL and NFL
22 Properties ran to this Court only after Alterra America Insurance Company filed suit in New York. Travelers
23 filed another action several days later, and all claims among all parties to this case are being actively litigated in
24 the Supreme Court, New York County, the most suitable and logical forum to resolve the insurance coverage
25 disputes.

26 What is California's alleged interest in this coverage dispute? According to the pleadings, California -
27 like New York and almost two dozen other states - is the home of certain NFL franchises, has been the site of
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1 NFL games and, not surprisingly, some of the underlying plaintiffs. The NFL/NFL Properties also claim two
2 of the 34 defendants are California corporations.²

3 While California might be an appropriate forum for one or more of the players' *underlying liability*
4 claims against the NFL, it has no more connection to the instant *coverage* dispute than Florida, Texas,
5 Louisiana, Tennessee, Arizona, Wisconsin, Pennsylvania, Ohio or any other state that has or ever had an NFL
6 franchise. New York is the jurisdiction with the most significant and meaningful contacts to the coverage issues
7 and the most convenient and appropriate forum to resolve the litigation among the parties. This case is a
8 textbook example of the circumstances under which a California court should dismiss or defer in favor of
9 competing litigation in a sister state, on the basis of inconvenient forum and as a matter of comity. Accordingly,
10 Travelers requests that the Court dismiss this action or, alternatively, stay this case pending the resolution of the
11 New York coverage litigation.

12 FACTUAL BACKGROUND

13 **A. The Parties**

14 The NFL is an unincorporated association formed pursuant to the laws of New York and headquartered
15 in New York. See NFL and NFL Properties' Complaint LLC's Complaint for Breach of Contract and
16 Declaratory Relief ("Complaint")³ at ¶ 1; September 11, 2012 Affidavit of Anastasia Danias ("Danias Aff.")⁴
17 at ¶ 4. NFL Properties is a Delaware corporation that is also headquartered in New York. See Danias Aff. at ¶
18 5; Complaint at 2. NFL and NFL Properties have sued 34 of their insurers in connection with the underlying
19 litigation. See generally Complaint. As detailed above, five of those insurers are members of the Travelers
20 Companies, which has its principal place of business in Connecticut. See Williams Aff. at ¶ 3. The Travelers
21 claim operation in New York City is handling the claims against the NFL and NFL Properties. Id. at ¶¶ 1, 9-10.
22 All of the Travelers policies at issue were negotiated, issued or issued for delivery to the NFL and NFL

23 ² The NFL and NFL Properties also assert that this Court should exercise jurisdiction in this matter since another defendant in
24 the underlying lawsuits, Riddell, Inc., commenced coverage litigation against its insurers in Los Angeles County several months ago, and
25 have asked the Court to deem the Riddell coverage litigation as a "related case." The NFL's and NFL Properties' assertions in this regard
are demonstrably incorrect, as set forth in the opposition filed by Travelers and other insurers to the "related case" application.

26 ³ A true copy of the Complaint is attached to the September 14, 2012 Affidavit of Rebecca A. Williams ("Williams Aff.") as
Exhibit E.

27 ⁴ A true copy of the Danias Aff. is attached to the Williams Aff. as Exhibit F. The Danias Aff. was filed by the NFL and NFL
28 Properties in the matter styled Alterra America Insurance Co., et al. v. National Football League, et al., Index No.: 652813/2012,
Supreme Court of the State of New York, County of New York (the "Alterra Action").

1 Properties in New York, often through New York insurance brokers and/or agents. Id. at ¶¶ 4-9. On
2 information and belief, most if not all other defendants also have substantial New York contacts, including,
3 without limitation, the issuance and/or delivery of policies through New York brokers. See September 14, 2012
4 Affidavit of Matthew C. Kalin, Esq. ("Kalin Aff.") at ¶ 6.

5 **B. The Underlying Lawsuits**

6 The NFL has been named as a defendant in at least one hundred forty-three lawsuits (hereinafter the
7 "Underlying Lawsuits"), wherein plaintiffs allege that the NFL's senior leadership knew the risks of permanent
8 brain injury arising out of concussions or other head trauma, and that instead of warning players about those
9 risks, intentionally withheld that knowledge and sought to profit by promoting the violent play of NFL football.
10 See Complaint at Intro., ¶¶ 50-53. NFL Properties, the New York headquartered "marketing arm" of the NFL,
11 is named as a defendant in eighty-six of the Underlying Lawsuits. See id.

12 The Underlying Lawsuits seek recovery based on several causes of action, ranging from fraud and
13 conspiracy to negligence. See id. The Underlying Lawsuits were commenced in the courts of California,
14 Texas, Pennsylvania, Mississippi, Georgia, Florida, New York, Louisiana and New Jersey. See id.; see also
15 Exhibit B to Complaint. The overwhelming majority of the Underlying Lawsuits have been consolidated for
16 pretrial proceedings in the multidistrict litigation session of the United States District Court for the Eastern
17 District of Pennsylvania. See Complaint at ¶ 51. The cases will be returned to their original fora for trial. See
18 28 U.S.C. §1407 (2012). An Amended Master Administrative Long-Form Complaint ("the Master
19 Complaint"),⁵ applicable to all cases, has been filed in the multidistrict proceeding. See Complaint at ¶ 51. The
20 Master Complaint states the claims made by the Underlying Plaintiffs in great detail, but centers on the claim
21 that the NFL's senior management knew the risk of brain injury to players, but failed to disclose it. See
22 generally Master Complaint. The NFL and NFL Properties' defense of the Underlying Lawsuits is being
23 conducted by their New York counsel, Paul, Weiss, Rivkind, Wharton & Garrison, LLP. See Williams Aff. at
24 ¶ 16.

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⁵ A true copy of the Master Complaint is attached to the Williams Aff. as Exhibit G.

1 **C. The Coverage Dispute**

2 On August 2, 2011, the NFL and NFL Properties first provided written notice of certain of the
3 Underlying Lawsuits to its New York insurance broker, Marsh USA, Inc. ("Marsh") by sending a letter from
4 the NFL's and NFL Properties' offices at 345 Park Avenue, New York, New York to Marsh's office at 1166
5 Avenue of the Americas, New York, New York. See August 2, 2011 Letter⁶; Williams Aff. at ¶ 14. On
6 August 8, 2011, Marsh forwarded the August 2, 2011 letter to Travelers. See August 8, 2011 facsimile.⁷ The
7 handling of the NFL's and NFL Properties' claims was assigned to Rebecca Williams, who works out of
8 Travelers' New York City office, located at 485 Lexington Avenue, New York, New York. See Williams Aff.
9 at ¶¶ 1, 9-10.

10 Travelers, the NFL, NFL Properties and certain other insurers thereafter exchanged communications
11 regarding the Underlying Lawsuits, the claims for coverage asserted by the NFL and NFL Properties, and
12 issues associated with the defense of the Underlying Lawsuits. See id. at ¶¶ 1, 9-10, 17-18. Each and every
13 communication to Travelers by or on behalf of the NFL and NFL Properties with respect to these matters was
14 issued from either 345 Park Avenue or Marsh's New York office, with exception of certain communications
15 from the Washington, D.C. office of Covington & Burling, coverage counsel to the NFL and NFL Properties.
16 See id. All communications from Travelers with respect to these matters were directed to the New York offices
17 of the NFL/NFL Properties and/or Marsh, with exception of certain communications with the Washington,
18 D.C. office of Covington & Burling. See id. The NFL, NFL Properties and Marsh also convened several
19 meetings with Travelers and other defendants to discuss the above matters. All of these meetings took place in
20 New York City. See id.

21 In other words, the NFL, NFL Properties and Travelers have handled the matters in dispute out of their
22 respective offices in New York. See id. And, to the best of Travelers' knowledge, the NFL, NFL Properties
23 and Marsh conducted their discussions and negotiations with all other defendants from their New York offices.
24 See id.

25 On August 13, 2012, Alterra advanced the coverage dispute to litigation, commencing an action in
26 New York state court seeking declarations as to its obligations to the NFL and NFL Properties with respect to
27

28 ⁶ A true copy of the August 2, 2011 Letter is attached to the Williams Aff. as **Exhibit H**.

⁷ A true copy of the August 8, 2011 facsimile is attached to the Williams Aff. as **Exhibit I**.

1 the Underlying Lawsuits. See Alterra Amended Complaint.⁸ Alterra since has filed an Amended Complaint
2 asserting claims against Travelers and other insurers. See id.

3 On August 15, 2012, after Alterra had filed its complaint in New York, the NFL and NFL Properties
4 commenced the instant action. See generally Complaint. The instant matter seeks the same relief as the Alterra
5 action, to wit, a declaration of rights and obligations as between the NFL, NFL Properties, Travelers and the
6 Insurer Defendants. Id.

7 On August 21, 2012, Travelers (which issued primary and umbrella policies to NFL Properties, and
8 excess liability policies to the NFL) filed a comprehensive coverage suit in New York state court. See
9 Travelers Complaint.⁹ In addition to seeking substantially the same relief as in the *Alterra* action and the instant
10 matter, Travelers challenges the plaintiffs' decision to defend the Underlying Lawsuits through the same
11 counsel, given the disparate allegations against the NFL and NFL Properties, as well as the possibility of claims
12 between those entities. See generally id.

13 Many insurers have answered the complaints filed by Alterra and Travelers. See Kalin Aff. at ¶ 4.
14 None that have answered have asserted lack of personal jurisdiction as a defense. See id. No answering insurer
15 defendant has asserted that the claims at issue in the New York litigations are non-justiciable. See id. Many of
16 the answers include cross and/or counter claims against the other parties, including the NFL and NFL
17 Properties. See id.

18 Discovery has commenced in the New York litigations, which have been assigned to the same judge
19 (Hon. Jeffrey Oing) of the Commercial Division of the New York Supreme Court for New York County. See
20 id. at ¶ 5. Judge Oing has scheduled a preliminary conference for September 19, 2012. See id. Travelers has
21 filed a motion to consolidate the cases, which is returnable on October 3, 2012. See id.

22 ARGUMENT

23 I. NEW YORK IS THE MOST SUITABLE AND CONVENIENT FORUM FOR 24 RESOLUTION OF THIS COVERAGE DISPUTE

25 A. The Applicable Standards

26 California Code of Civil Procedure § 410.30 authorizes the Court to dismiss or stay this action on the
27 grounds of inconvenient forum:

28 ⁸ A true copy of the Alterra Amended Complaint is attached to the Williams Aff. as **Exhibit K**.

⁹ A true copy of the Travelers Complaint is attached to the Williams Aff. as **Exhibit L**.

1 When a court upon motion of a party or its own motion finds that in the interest of substantial
2 justice an action should be heard in a forum outside this state, the court shall stay or dismiss the
3 action in whole or in part on any conditions that may be just.

4 Cal. Code of Civ. Proc. § 410.30; Stangvik v. Shiley Inc., 819 P.2d 14, 17 (Cal. 1991). Whether “substantial
5 justice” dictates that this action should be heard in New York presents two questions. First, the Court must
6 determine “whether the alternate forum is a suitable place for trial.” Stangvik, 819 P.2d at 17; see also Animal
7 Film, LLC v. D.E.J. Prods., Inc., 193 Cal. Rptr. 3d 72, 77 (Cal. Ct. App. 2011). The New York forum “is
8 suitable if there is jurisdiction and no statute of limitations bar to hearing the case on the merits.” Animal Film,
9 193 Cal. Rptr. 3d at 77 (quoting Roulier, 101 Cal. App. 4th at 1186) (other quotations and citations omitted);
10 see also Roulier, 101 Cal. App. 4th at 1187 (holding that the question of whether an alternative forum is suitable
11 turns on “whether the action may be commenced in the alternative jurisdiction and a *valid judgment* [may be]
12 *obtained there against the defendant*”) (emphasis in original).

13 The second question is whether the private and public interests presented, on balance, favor New York.
14 Animal Film, 193 Cal. Rptr. 3d at 78; see also Morris, 51 Cal. Rptr. 3d at 310-11. This decision rests within the
15 discretion of the Court. See Animal Film, 193 Cal. Rptr. 3d at 78. The private interest factors involve practical
16 considerations, such as access to proof, location of the parties, the availability of compulsory process to secure
17 attendance of witnesses and the enforceability of any judgment ultimately rendered. See Animal Film, 193 Cal.
18 Rptr. 3d at 77-78.

19 The public interest factors look not to the parties, but to matters of public concern, such as burdens on
20 the Court, “protecting potential jurors who should not be called on to decide cases in which the local
21 community has little concern, and weighing the competing ties of California and the alternate jurisdiction to the
22 litigation.” Animal Film, 193 Cal. Rptr. 3d at 78 (citing Stangvik, 819 P.2d at 751); Roulier, 101 Cal. App. 4th
23 at 1188 (same). Choice of law is a public factor to be considered. See Century Indem. Co. v. Bank of Am.,
24 FSB, 68 Cal. Rptr. 2d 132, 134-35 (Cal Ct. App. 1997); Celotex Corp. v. Am. Ins. Co., 245 Cal. Rptr. 429, 432-
25 33 (Cal. Ct. App. 1987). California has little interest in an insurance dispute governed by foreign law. See
26 Century, 68 Cal. Rptr. 2d at 135. Consideration of these factors compel dismissal of this action in favor of the
27 pending New York litigation.
28

1 **B. New York Is a Suitable Alternate Forum**

2 New York is a suitable forum because all claims at issue in this case may be litigated and brought to
3 judgment there. The New York court has subject matter jurisdiction over the dispute. NFL and NFL Properties
4 assert claims for breach of contract and for declaratory judgment. Those claims may be asserted and such relief
5 may be obtained in the New York Supreme Court. See N.Y. Const., Art. 6, § 7. Second, New York has
6 personal jurisdiction over the parties. All of the insurers have waived any personal jurisdiction defense by
7 appearing in New York and answering the complaints without raising that defense. See Sessa v. Board of
8 Assessors of Town of North Elba, 46 A.D.3d 1163, 1164-65 (N.Y. App. Div. 2007). New York has personal
9 jurisdiction over the NFL and NFL Properties because they are located in New York. See N.Y. C.P.L.R. 301.

10 No insurer that's has answered has asserted that the claims at issue in the New York action are non-
11 justiciable or that the New York court is otherwise unable to grant the relief requested by the parties thereto.

12 As noted above, the NFL and NFL Properties seek to compel Travelers to pay defense costs under
13 policies issued to NFL Properties, and also contend that Travelers is obligated to indemnify the NFL and NFL
14 Properties with respect to any award of damages in or settlement of the Underlying Lawsuits under the
15 Travelers primary, umbrella and upper level excess policies.

16 While it is unclear what, if any, damages may be awarded in the Underlying Lawsuits, the relief sought
17 by the plaintiffs could easily exceed hundreds of millions of dollars, and New York courts will entertain
18 declaratory judgment actions as to such claims. See, e.g., State Farm Fire and Cas. Co. v. LiMauro, 103 A.D.2d
19 514, 481 N.Y.S.2d 90 (2nd Dep't 1984) ("it is long settled that a declaratory judgment action against insurers,
20 including excess carriers, is permitted prior to judgment where the 'judgments likely to be recovered' in the
21 underlying claims would amount to more than the excess floor").

22 Finally, since the insurance coverage dispute between the NFL/NFL Properties and their insurers is
23 contractual in nature, the New York statute of limitations governing such actions is six (6) years. See N.Y.
24 C.P.L.R. 213. The first lawsuit in the Underlying Lawsuits was commenced in July, 2011. No cause of action
25 for breach of contract or declaratory judgment asserted herein could have accrued before that date. As such, the
26 New York actions are timely. There can be no debate that parties can prosecute their competing claims in New
27 York to an enforceable judgment. New York is therefore a "suitable forum" for this dispute as a matter of law.
28 Roulier, 101 Cal. App. 4th at 1187.

1 **C. The Private Interest Factors Favor New York.**

2 The private interest factors weigh heavily in favor of New York because that is where the evidence
3 *relevant to the coverage dispute* is concentrated and available. The main focus of private interest analysis is on
4 practical litigation and trial issues, such as ease of access to proof, location of the parties, the availability of
5 compulsory process to secure attendance of witnesses and the enforceability of any judgment ultimately
6 rendered. See Animal Film, 193 Cal. Rptr. 3d at 78 (quoting Stangvik, 819 P.2d at 751) (quotations omitted).
7 A New York forum provides the best and easiest access to relevant and necessary witnesses, documents and
8 other evidence.

9 By way of example, the “point person” for the NFL and NFL Properties with respect to the Underlying
10 Lawsuits and the claims for coverage under the policies at issue is Anastasia Danias, whose business address is
11 345 Park Avenue, New York City. Other witnesses likely to be called will include the insurance brokers and
12 agents NFL and NFL Properties hired to organize their insurance portfolios, buy the insurance policies here at
13 issue, and advocate their coverage positions, most or all of whom are located in New York.¹⁰

14 Additionally, one of the coverage issues that will be litigated in this case is fortuity – whether, at the
15 time a given policy was issued, the NFL and/or NFL Properties knew or should have known that its actions
16 and/or omissions would result in the injuries alleged in the underlying cases. Proof on that issue likely will
17 involve testimony and other evidence from the NFL and NFL Properties and their employees. That evidence is
18 located in New York, the home of the NFL and NFL Properties. Other likely New York witnesses include the
19 people in charge of NFL’s insurance claims (including Anastasia Danias) and NFL’s defense counsel (Paul
20 Weiss).

21 These witnesses are subject to compulsory process in New York, but not in California. Under
22 California law, Travelers and the other insurers cannot compel any non-resident witness, including *employees*
23 *of NFL and NFL Properties*, to appear for deposition or trial. See Toyota Motor Corp. v. Superior Court, et al.,
24 130 Cal. Rptr. 3d 131, 136, 139 (Cal. Ct. App. 2011). Nor can they compel the production of documents at trial
25 where authentication testimony is required from a non-resident witness. See Amoco Chem. Co. v. Certain
26 Underwriters at Lloyd’s of London, 40 Cal. Rptr. 2d 80, 83-85 (Cal. Ct. App. 1995). These California

27 ¹⁰ In addition to Marsh’s New York office, the brokers/agents involved with the negotiation, issuance and delivery of the
28 Travelers policies are A.L. Carr Agency, Inc., 101 Mill Dam Road, Centerport, NY 1172; Tri-City Insurance Brokers, (c/o CRC Crump
Insurance), 199 Water Street, New York, NY 10038; Hilb Rogal & Hobbs Company, c/o Willis North America Inc., One World
Financial Centre, 200 Liberty Street, New York, NY 10281. See Exhibit A to the Williams Aff.

1 limitations will severely impede the ability of Travelers and the other insurers to litigate their cases and obtain a
2 just result. The NFL and NFL Properties, which presumably can obtain voluntary attendance from those of its
3 employees, attorneys, brokers and other similarly affiliated or controlled witnesses that can provide testimony
4 favorable to it, will not be disadvantaged in the same way by proceeding in California.

5 In contrast, all parties to the New York coverage litigation enjoy both access to all necessary proofs,
6 and an even evidentiary playing field. Compulsory process can secure attendance at trial of the many witnesses
7 and potential witnesses that live or work in New York. To the extent there are employees of the Plaintiffs who
8 are not New York residents, New York law even permits compulsion of their attendance at a deposition and
9 trial in New York. See 23/23 Commc'ns Corp. v. Gen. Motors Corp., 660 N.Y.S.2d 296, 297-98 (N.Y. Sup.
10 Ct. 1997) (citing Standard Fruit & Steamship Co. v. Waterfront Commn. Of New York Harbor, 43 N.Y.2d 11,
11 15-16 (N.Y. 1977)).

12 The superiority of the New York forum from a practical litigation perspective is hardly surprising.
13 New York is the home of NFL and NFL Properties, the place of contracting for all or most of the policies at
14 issue and the center of the insurance coverage dispute that gave rise to the instant litigation. New York is also
15 the focal point of the NFL and NFL Properties' alleged concealment and misrepresentation of the head trauma
16 risk.

17 **D. The Public Interest Factors Favor New York.**

18 The public interest factors revolve around matters of public concern rather than the parties' private
19 interests. Public interest factors include which state's law will govern the insurance policies, the burden the case
20 will impose on the California court system and the legitimate interests of California and its citizens, and the
21 competing interests of New York in this dispute. See Animal Film, 193 Cal. Rptr. 3d at 78 (citing Stangvik,
22 819 P.2d at 751); Roulier, 101 Cal. App. 4th at 1188; Century, 68 Cal. Rptr. 2d at 134-35; Celotex Corp., 245
23 Cal. Rptr. at 432-33. These factors also weigh heavily in favor of New York.

24 **1. New York law applies to the insurance policies at issue.**

25 While Travelers does not seek partial summary judgment as to the choice of law issue through this
26 motion, the law to be applied to the coverage dispute is a significant part of the public interest factor analysis.
27 First, a court is most familiar with and best able to apply the law of its home state. Second, the state whose law
28 is at issue is a superior forum from a public interest perspective because that state has a vested interest in the

1 development, application and enforcement of its law. See Century Indem. Co., 68 Cal Rptr. at 134 (New York
2 has a significant interest in overseeing and adjudging the interpretation of policies that are subject to New York
3 law).

4 California applies the “governmental interest” approach, set forth in the Restatement (Second) Conflict
5 of Laws §§ 188 and 193, to determine applicable law in insurance coverage disputes. Bernhard v. Harrah’s
6 Club, 16 Cal.3d 313, 318-19 (Cal. 1976); see also Stonewall, 17 Cal. Rptr. 2d at 718. Where there is a state in
7 which the insured risk principally is located, the law of that state applies. Stonewall, 17 Cal. Rptr. 2d at 718-19,
8 Restatement, § 193. Where the risk is not principally located in one state, the relevant contacts to be considered
9 by the Court are: “(a) the place of contracting, (b) the place of negotiation of the contract, (c) the place of
10 performance, (d) the location of the subject matter of the contract, and (e) the domicile, residence, nationality,
11 place of incorporation and place of business of the parties.” Stonewall, 17 Cal. Rptr. 2d at 718 (citing
12 Restatement (Second) of Conflict of Laws § 188(2)). New York law will govern resolution of the coverage
13 dispute under either standard.

14 If the risk or risks insured by the NFL and NFL Properties policies can be said to be located in any one
15 state, that state is New York. The NFL and NFL Properties corporate offices have been located there at all
16 relevant times. The policies were issued and/or issued for delivery to both insureds there. State Farm Mut.
17 Auto. Ins. Co. v. Superior Ct., 8 Cal. Rptr. 3d 56, 68 (Cal. Ct. App. 2003) (“An insured risk is the object or
18 activity which is the subject matter of the insurance, and has its principal location ... in the state where it will be
19 during at least the major portion of the insurance period.”). The policy premiums, at least for the Travelers’
20 policies, demonstrate the principal risk location was New York (and not California). For example, the premium
21 for the first commercial general liability policy issued by Travelers to NFL Properties was approximately
22 \$14,000. See Williams Aff. at ¶¶ 5-6. Only \$1,654 of that premium was based on California exposures; \$176
23 was for New Jersey, and the rest was for New York. See id. Several of the later Travelers primary NFL
24 Properties policies include policy endorsements that specify the premium state by state. See id. at ¶¶ 8. Over
25 80% of the premiums charged relate to New York risks. See id. Ten percent or less of the premium is reported
26 to relate to California. See id. The premium for each of these policies is taxed by the State of New York. See
27 id. at ¶ 7.

1 If New York is not deemed to be the principal location of the insured risk, California law compels the
2 Courts to follow the Restatement and analyze the multistate risks at issue separately, as if each were covered by
3 its own policy. Stonewall, 17 Cal. Rptr. 2d at 719. In Stonewall, the Supreme Court was presented with a
4 conflict of law question in a suit involving insurance coverage for damages arising out of a defective electric
5 battery. The Supreme Court held that California law applied because the cause of the injury – manufacture
6 and sale of the defective battery in California – occurred in California, California law should be applied. See
7 Stonewall, 17 Cal. Rptr. 2d at 719-20.

8 Application of this logic to the NFL and NFL Properties policies call for application of New York law.
9 The core allegation of the Underlying Lawsuits is that high level NFL management knew or should have
10 known the risks associated with repetitive head trauma and failed to disclose it to players. If true, such
11 corporate actions or inactions – which would likely eliminate coverage under the Travelers policies - took place
12 in and/or were authorized by NFL/NFL Properties' New York headquarters.¹¹ New York has a strong interest
13 in the resolution of these coverage issues, and whether they represent insurable activities by New York
14 businesses.¹²

15 California's interest is tangential at best. There is no basis upon which to conclude that, when the
16 insurance contracts were issued, any party thereto reasonably could or would have expected that insurance
17 coverage under the policies for multi-state claims arising out of New York acts would be governed by the law
18 of any state other than New York, and certainly not California.

19 To the extent the Court does not agree that New York is the principal location of the insured risk, New
20 York controls the interpretation of the Travelers Policies because all of the "relevant contacts" point to New
21 York. The relevant contacts are as follows: "(a) the place of contracting, (b) the place of negotiation of the
22 contract, (c) the place of performance, (d) the location of the subject matter of the contract, and (e) the domicile,

23
24 ¹¹ Certainly no credible contention can be made that California is the "principal location" of the risk(s) insured by the NFL or
25 NFL Properties policies. California has no special or distinguishing connection with the NFL/NFL Properties policies or the underlying
26 cases. It is just another of the nearly two dozen states in which NFL teams are or were located and/or NFL games are or were played, and
the domicile of two of the 34 insurers. In other words, if the Court were to conclude that the law of New York is unlikely to govern the
coverage dispute, the alternative is application of the law of multiple states to specific claims and/or issues.

27 ¹² For example, New York law defines an insurance contract as an agreement by one party to pay another "upon the happening
28 of a fortuitous event," meaning "any occurrence or failure to occur which is, or is assumed by the parties to be, to a substantial extent
beyond the control of either party." N.Y. Ins. Law § 1101(a)(1)-(2).

1 residence, nationality, place of incorporation and place of business of the parties.” Stonewall, 17 Cal. Rptr. 2d
2 at 718 (citing Restatement (Second) of Conflict of Laws § 188(2)).

3 The Travelers policies (and all but a handful of the dozens of policies issued by other insurers) were
4 issued and/or issued for delivery to NFL and NFL Properties in New York. The policies issued by Travelers
5 to NFL Properties were procured for NFL Properties through a New York insurance broker, the A.L. Carr
6 Agency. The policies issued by Travelers to the NFL also were issued through New York insurance brokers
7 and agents, Tri-City Insurance Brokers or Marsh.

8 While no single state can be said to be the only place of performance of the policies with respect to the
9 Underlying Lawsuits, New York does have significant connections with that requested performance. The
10 demands for performance under the policies all have originated from New York. Responses to those requests
11 have been made by Travelers in New York. The lion’s share of the defense costs that Travelers and the other
12 insurers are being asked to pay were generated in New York. No other state has as significant a connection
13 with contract performance.

14 The “location of the subject matter of the contracts” contact is analogous to the location of the risk
15 insured issue discussed above. That location is New York. The final contact – the location of the parties, also
16 favors New York. New York is and long has been the home of both insureds. It is also the domicile and/or
17 principal place of business of many of the insurers. Others, like Discover, one of the Travelers companies,
18 interacted with NFL and NFL Properties through New York offices and employees and New York based
19 insurance brokers. No other location or state has such wide and deep a relationship with the parties and their
20 relevant interactions.

21 2. Other Public Interest Factors Favor New York

22 The remaining public interest factors – California’s interest in the dispute, the burden on the California
23 court system and the concern of California’s citizens, especially jurors, over the issues in this matter – also favor
24 New York as the appropriate forum. See Animal Film, 193 Cal. Rptr. 3d at 78 (citing Stangvik, 819 P.2d at
25 751); Roulier, 101 Cal. App. 4th at 1188 (same).

26 California has no direct interest in this case. The benefit or burden of any decision on coverage will be
27 felt by NFL and NFL Properties in New York. There are no California based rights at issue. Indeed,
28 California has no special or meaningful connection to this coverage dispute whatsoever. It is merely one of

1 nearly two dozen states (including New York) in which NFL games were played, concussions presumably
2 occurred and players reside or resided.

3 Finally, it is appropriate for the Court to weigh the quality and quantity of the New York and California
4 contacts against the significant burden the NFL and NFL Properties seek to impose on this Court. This action
5 will involve a great deal of discovery, complex legal issues and substantial judicial involvement and oversight.
6 While the Superior Court (and Los Angeles County in particular) is no stranger to complex commercial
7 litigation, the Court's docket should not be clogged with an out of state dispute. California jurors should not be
8 "called on to decide cases in which the local community has little concern. . . ." Animal Film, 193 Cal. Rptr. 3d
9 at 78; see also Morris, 51 Cal. Rptr. 3d at 312 ("It seems unduly burdensome for California residents to be
10 expected to serve as jurors on a case having so little to do with California"). There is no reason for California -
11 and in particular, citizens and taxpayers of Los Angeles County - to bear these burdens. Indeed, the plaintiffs'
12 attempt to invoke this Court's jurisdiction over their New York-centered coverage dispute is particularly ironic
13 in light of the fact that Los Angeles has even not had an NFL franchise in more than 17 years, and will probably
14 not get one absent public financing for a new stadium, among other considerations. New York is the center of
15 activity relevant to the case, the location of the Plaintiffs, the location of the overwhelming majority of
16 witnesses and relevant documentary evidence, and the state whose law will apply and whose interests are at
17 stake.

18 **II. PRINCIPLES OF COMITY REQUIRE THAT THE COURT STAY THIS ACTION IN**
19 **FAVOR OF THE PRIOR PENDING NEW YORK LITIGATION**

20 California courts long have recognized that comity requires a court to defer proceeding with a case where
21 there exists a prior suit addressing the same subject matter. See Simmons v. Superior Ct., 214 P.2d 844, 848-49
22 (Cal. Dist. Ct. App. 1950); see also Gregg v. Superior Ct., 239 Cal. Rptr. 380, 381-82 (Cal. Ct. App. 1987). The
23 instant action is, at best, a second-filed lawsuit that should be stayed pending the resolution of the pending New
24 York coverage litigation.

25 The Court can and should consider any factor which "bears on the relative suitability or convenience of
26 the two forums." Century Indem. Co. v. Bank of Am., FSB, 68 Cal Rptr. 2d 132, 134 (Cal. Ct. App. 1997).
27 The trial court "should also consider whether the rights of the parties can best be determined by the court of the
28 other jurisdiction because of the nature of the subject matter, the availability of witnesses, or the stage to which

1 the proceedings in the other court have already advanced.” Thomson v. Cont’l Ins. Co., 427 P.2d 765, 771
2 (Cal. 1967). An additional factor identified in Thomson – the advanced stage of the New York proceedings –
3 also favors a stay.

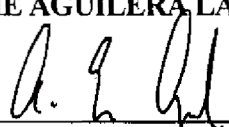
4 Here in California, no steps have been taken in the litigation to join and advance resolution of the
5 disputed coverage issues. The only issue that is being addressed is the forum dispute. In New York, the
6 situation is quite different. Activity to date in the New York litigation includes the filing and service of
7 answers, counterclaims and cross-claims, service of written discovery to all parties, assignment of these cases
8 (to the same judge) a motion to consolidate the New York actions, and a status conference scheduled for
9 September 19, 2012. In short, the New York litigation is off and running while this case remains stalled in
10 place. The Court should exercise its discretion to allow the progress in New York to continue and stay this
11 case.

12 CONCLUSION

13 The dispute framed by this motion is not whether the plaintiffs can demonstrate some connections
14 between California and the underlying head trauma litigation or professional football. Travelers does not
15 dispute the fact that several NFL teams call or called California home, and California may well be the location
16 where the NFL has sold the most game tickets, beer, hot dogs and/or pennants. The issue before the Court,
17 however, is whether it should, in the sound exercise of its discretion, retain jurisdiction over *this insurance*
18 *coverage dispute*, pressed by two New York policyholders, which arises from an *insurance relationship*
19 *centered in New York*, and *which is already pending in the courts of New York*, based on nothing more than a
20 watery soup of California “contacts” that are largely irrelevant to the resolution of the coverage dispute. The
21 Court should decline to do so, and dismiss this litigation in favor of the pending New York litigation or, in the
22 alternative, stay this action until the New York proceedings have concluded.

23 Dated: September 14, 2012

24 THE AGUILERA LAW GROUP, APLC

25 
26 A. Eric Aguilera, Esq.
27 Attorneys for the Travelers Defendants
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the City of Costa Mesa, County of Orange in the State of California. I am over the age of 18 and am not a party to the within action. My business address is 650 Town Center Drive, Suite 100, Costa Mesa, California 92626. On September 14, 2012, I served the documents named below on the parties in this action as follows:

DOCUMENT(S) SERVED: the travelers insurers' notice of and motion to dismiss and/or stay based on forum non convenies [c.c.p. §§ 410.30(a) and 418.10 (a)(2)] AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF MATTHEW C. KALIN, ESQ.; and REBECCA A. WILLIAMS

SERVED UPON: SEE ATTACHED SERVICE LIST

☐

(BY MAIL) I verify that each such envelope, with postage thereon fully prepaid, has been or will be placed in the United States mail at Costa Mesa, California. I am readily familiar with the practice of The Aguilera Law Group, APLC, for collection and processing of correspondence and/or documents for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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(BY PERSONAL SERVICE) I verify that the above-referenced document(s) have been or will be personally delivered on September 14, 2012, to the recipients listed below.

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(BY OVERNIGHT DELIVERY) I am readily familiar with the practice of The Aguilera Law Group, APLC, for the collection and processing of correspondence for overnight delivery and known that the document(s) described herein will be deposited in a box or other facility regularly maintained by Overnight Express for overnight delivery.


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(BY ELECTRONIC MAIL) The above-referenced document was transmitted via electronic service and the transmission was reported as complete and without error. Pursuant to C.R.C. 2.260, I verify that the documents have been electronically transmitted from my registered email address provided by my employer, The Aguilera Law Group, APLC, and was sent on September 14, 2012.

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(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 14, 2012, at Costa Mesa, California.


Kat L. Rickard

SERVICE LIST

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22	Lawrence A. Cox, Esq. 23 Nicholas O. Kennedy, Esq. JACKSON & CAMPBELL 24 1120 20 th Street, NW #300 South Washington DC, 20036 25 T: 202-457-1688 / F: 202-457-1678 26 27 28	Defendant: CHARTIS PROPERTY CASUALTY COMPANY; CHARTIS SPECIALTY INSURANCE COMPANY; ILLINOIS NATIONAL INSURANCE COMPANY; NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA

06/12/12